

REMARKS

Claims 1-10 and 12 are pending in the subject application. By this Amendment, applicants have amended claims 1 and 12 to obviate the 35 U.S.C. §112 rejection and to more clearly distinguish the invention from the prior art. Support for these amendments may be found in the specification, *inter alia* at page 9, lines 9-11 and in Fig. 6 of the drawings.

The present invention concerns a novel ventricular assist device for a heart. The device comprises a pump portion with an inflow tube protruding from the pump portion. In the Fig. 6 embodiment, the inflow tube is 146. An adapter sleeve (which in Fig. 6 is sleeve 160) of a first predetermined length is attached to the inflow tube, forming an extended inflow tube having a total length greater than the first predetermined length. The adapter sleeve carries an adjustable attachment member for attaching the adapter sleeve to the inflow tube and to permit the adapter sleeve to extend or retract from an end of the inflow tube.

No issue of new matter is raised by these amendments. Accordingly, upon entry of this Amendment, claims 1-10 and 12, as amended, will be pending in the subject application.

In view of the preceding claim amendments and the remarks which follow, applicants maintain that the grounds of rejections set forth in the October 21, 2009 Office Action have been overcome, and respectfully request that the Examiner reconsider and withdraw these grounds of rejection.

**Rejections Under 35 U.S.C. §112**

The Examiner has rejected claims 1-10 and 12 under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner alleged that there is no description of telescopic or telescopic interactions between the components as set forth in the previous claims.

In response, without conceding the correctness of the Examiner's position, applicants have amended claims 1 and 12 to remove the terms "telescopic relationship" and "telescopically" from the claims. The present claims are amended to state that the adjustable attachment member permits the adapter sleeve to extend or retract from an end of the inflow tube. This language is from the specification, *inter alia* at page 9, lines 9-10. No issue of new matter is raised by these amendments.

In view of these amendments to claims 1 and 12, applicants maintain that the claims are no longer subject to rejection under 35 U.S.C. § 112, first paragraph, and respectfully request that the Examiner reconsider and withdraw this ground of rejection.

**Rejections Under 35 U.S.C. §103**

A. The Examiner rejected claims 1-3, 7-10 and 12 as allegedly unpatentable over Kahn et al. (U.S. Patent 3,766,567). Applicants contend that this rejection is erroneous and should be withdrawn.

In the "Response to Arguments" the Examiner alleges that Kahn et al.'s arterial graft tubings are "flexible and compressible and can be extended or retracted" and are "capable of being compressed or extending in the longitudinal plane." This is incorrect. Kahn

et al.'s arterial graft tubings are stated, in column 6, lines 37-40 of Kahn et al.'s patent, to be "made of flexible, non-collapsible materials, for example, spirally wound metal wire covered with silicone with an interior bonded covering of Dacron velour." Kahn et al.'s tubings are in the nature of **garden hoses**, which are flexible and non-collapsing, and which clearly **cannot extend or retract**. Kahn et al.'s spirally wound metal wire is covered with silicone with an interior bonded covering of Dacron velour, preventing the tubings from extending or retracting. Not only is it speculative to consider Kahn et al.'s tubings to have the ability to extend or retract, but it is also erroneous based on Kahn et al.'s own disclosure of the materials from which Kahn et al.'s tubing is constructed.

Applicants' claims specify that the adapter sleeve carries an adjustable attachment member for attaching the adapter sleeve to the inflow tube and to permit the adapter sleeve to extend or retract from an end of the inflow tube. This is very clearly shown in Fig. 6 and is described, for example, on page 9, lines 9-10. There is nothing in Kahn et al. that even resembles this. Kahn et al.'s graft tubing 87 is sutured in place, and is fixed, preventing any extension or retraction. Accordingly, Kahn et al. teaches away from applicants' claimed invention and provides a construction that is precisely what applicants do not want. Kahn et al.'s teaching of a fixed graft tube 87 is contrary to the purposes and results of applicants' novel invention as now claimed, and the Kahn et al. reference should be withdrawn.

Claim 9, which is dependent upon claim 1, specifies that the inflow tube includes an extendable end. The Examiner refers to column 6, lines 31-33 of Kahn et al., which refers to the connectors of Figs. 6 and 7 of Kahn et al. Close inspection of

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Figs. 6 and 7 of Kahn et al. will show that these connectors are not extendable, as the Examiner contends.

In view of the preceding remarks, applicants request that the Examiner reconsider and withdraw the rejection of claims 1-3, 7-10 and 12 as obvious over Kahn et al.

B. The Examiner rejected claims 4 and 6 as allegedly unpatentable over the modified Kahn et al. (U.S. Patent 3,766,567) as applied to claims 1-4, 6-10 and 12.

As an initial matter applicants direct the Examiner to their comments above concerning the differences between their invention as recited in the claims, as amended above, and the disclosure of Kahn et al. Applicants maintain that in view of these differences it would not have been obvious to make applicants' claimed invention. In this regard, applicants note that claims 4 and 6 depend from claim 1 which has been amended to more clearly recite the differences from the cited art including Kahn et al.

In view of the preceding remarks, applicants request that the Examiner reconsider and withdraw the rejection of claims 4 and 6 as obvious over Kahn et al.

C. The Examiner rejected claim 5 as allegedly unpatentable over the modified Kahn et al. (U.S. Patent 3,766,567) as applied to claims 1-4, 6-10 and 12.

Claim 5, which is dependent upon claim 1, specifies that the adapter sleeve includes cylindrical grooves forming perforations on the surface of the sleeve whereby the sleeve may be separated along the grooves. This is disclosed on page 10 of the

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specification, last paragraph. On page 6 of the office action, the Examiner has tried to discard this claimed invention by stating that "it would have been obvious" without any proper basis for such statement. Applicants contend that none of the prior art references disclose or teach perforating an adapter sleeve as claimed to allow customization of the length of the adapter sleeve. This feature cannot be cast aside as "obvious" merely because it has a useful function.

In view of the preceding remarks, applicants request that the Examiner reconsider and withdraw the rejection of claim 5 as obvious over Kahn et al.

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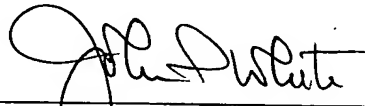
**CONCLUSION**

A sincere effort has been made to distinguish the invention from the prior art references. In view of the amendments and remarks made hereinabove, applicants respectfully submit that the grounds of rejection set forth in the October 21, 2009 Final Office Action have been overcome. Accordingly, applicants earnestly solicit allowance of the claims now pending, i.e. claims 1-10 and 12, as amended.

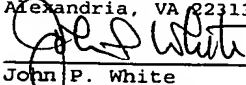
If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee, other than the enclosed \$245.00 fee for a two month extension of time for a small entity, is deemed necessary in connection with the filing of this Amendment. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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